IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13340 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJAI YOGESH @ YOGU CHELARAM

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13340 of 2004

MS BANNA DUTTA WITH MR AR SHAIKH for Petitioner No. 1

MR HM PRACHCHHAK, AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 14/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by District Magistrate, Bhavnagar District, Bhavnagar on 7th August, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 26th August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration four criminal cases filed against the petitioner under the Bombay Prohibition Act and secondly, the detaining authority took into consideration four incamera statements of the witnesses as recorded by the sponsoring authority on 28th July, 2004 and verified by the detaining authority on 2nd August, 2004. The identity of the witnesses are not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act. The four cases came to be registered against the petitioner, one before Prohibition Police Station, Bhavnagar on 17th March, 2004, second before "B" Division Police Station, Bhavnagar on 31st March, 2004, third before Prohibition Police Station, Bhavnagar on 30th May, 2004 and fourth before "B" Division Police Station, Bhavnagar on 8th June, 2004. It was alleged that in the first case, the petitioner was found in possession of 182 bottles of prohibited foreign liquor as well as 53 bottles of prohibited beer, in second case, he was found in possession of 24 bottles of prohibited foreign liquor, in third case, he was found in possession of 20 bottles of prohibited liquor and in fourth case, he was found in possession of 50 bottles of prohibited foreign liquor. The detaining authority considered exhaustively and thoroughly investigation papers in all four cases registered against the petitioner. After considering these materials, the detaining authority came to the conclusion that the petitioner was dealing in storing, selling and transporting prohibited liquor and was a bootlegger within the meaning of PASA Act.

3. Secondly, the detaining authority also considered four incamera statements, the first witness referred to an incident occurred before one and half month of recording of statement. At about 9.00 P.M., while the witness returning to his resident from Sanskar Mandal, he noticed that at the den of the petitioner of liquor, many persons were gathered there, one drunken person came on road and stopped the scooter of the witness. The said

person told the witness to take him to his house, the witness denied as he did not know the said person, the said person started abusing the witness and when the witness requested the said person not to abuse him, the petitioner and his accomplices reached at the spot with weapon and caught hold the witness. On shouting for help by the witness a crowd was gathered, but the petitioner and his accomplices rushed towards the crowd with open weapon and, therefore, the people started running helter-skelter, the atmosphere of terror was spread. The witness was threatened by the petitioner and his accomplices that if the witness dared to file a complaint before the police, he would be done to death. He did not file any complaint before the police on account of fear of the petitioner. The second witness referred to an incident occurred before two months of recording of the statement of the witness. The witness was passing through near Devuma Temple at about 13.00 hours, the petitioner and his accomplices approached the witness and stated that the witness had provided information to the police resulting in seizure of illegal liquor of the petitioner by the police and the petitioner sustained damage to the tune of Rs.10,000-00. The witness was told by them to deliver the damage of Rs.10,000-00 to the petitioner, the witness denied to give any information to the police and it was not possible for the witness to give the amount of Rs.10,000-00 to the petitioner. On saying so by the witness, the petitioner and his accomplices got excited and started giving abuses to the witness and started beating the witness. The witness shouted for help, a crowd of persons gathered at the place of incident. Therefore, the petitioner and his accomplices rushed towards the said crowd with open weapon and people started running helter-skelter, the roads became barren on account of terror and fear of the petitioner. Thereafter, the petitioner was threatened by open knife that if the witness dared to file any complaint before the police, he would be done to death. On account of fear of the petitioner, the witness did not file a complaint before the police. The third witness referred to the incident occurred before three months of recording of the statements of the said witness. At about 4.00 P.M., the witness passing through near Sardarnagar in his car and the said car was stopped by the petitioner and his accomplices, the witness was told to hire his car to the petitioner for transporting foreign liquor and they would prepare to pay hire charges. The witness refused the same and, therefore, the petitioner and his accomplices started giving abuses to the witness and started beating him. On shouting for help by the witness, a crowd was gathered at the place,

but the petitioner and his accomplices rushed towards the crowd with open knife and took out Rs.500-00 from his pocket and threatened that if the witness dared to file a complaint before the police, he would be done to death. On account of fear of the petitioner, the witness did not file any complaint. The fourth witness referred to an incident occurred before two months and some days of recording of the statements at about 2.00 P.M., the petitioner approached the witness in rickshaw and stated that on account of raid by the police, the petitioner intended to keep the bags of foreign liquor in the house of the witness. The witness denied and refused to keep the said bags, the petitioner started giving abuses to the witness and when the witness requested him not to abuse, the petitioner started beating him, the residence of nearby locality were gathered. The petitioner took out a hockey stick from the rickshaw and started giving abuses to the crowd and rushed towards the crowd. Thereupon, persons running helter-skelter and confined to their respective houses, the atmosphere of terror was spread and, thereafter, the petitioner came to the witness and gave two blows of hockey stick on the legs of the witness and threatened the witness that if the witness dared to file any complaint before the police against him, he would be done to death. On account of fear of the petitioner, the witness did not file any complaint before the police.

4. Relying upon the above materials, the detaining authority came to the conclusion that the petitioner was engaged in bootlegging activities and was harassing innocent citizens who became obstacle in the illegal activities of selling prohibited liquor. In view of the detaining authority, the bootlegging activities of the petitioner were required to be prevented forthwith. The detaining authority also came to the conclusion that bootlegging activities of the petitioner were prejudicial to the maintenance of the public order and were affecting adversely to the public health. After considering remedies available against the petitioner in general law, the detaining authority came to the conclusion that there was no other alternative, except to detain the petitioner under the PASA Act. The detaining authority, therefore, passed the order of detention of the petitioner, which is under challenge in this petition.

5. Learned advocate Ms.Banna Dutta for the petitioner and learned AGP Mr.H.M.Prachchhak for the respondent No.3 were heard at length. The affidavit-in-reply as filed by the detaining authority and placed on record by the learned AGP is also taken on

record.

6. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible and cogent material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed and public health was adversely affected.

7. To reach to the subjective satisfaction that the bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life property or the public health. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of breach of law and order and the cases falling within the category of breach of public order.

8. Now referring to four criminal cases filed against the petitioner under the Bombay Prohibition Act for possession of prohibited liquor and going through the investigation papers as placed on record, it is found that those cases came to be filed against the petitioner because he was dealing in prohibited liquor. The possession of prohibited liquor is breach under the Bombay Prohibition Act and, therefore, the case could be filed against the petitioner. However, merely filing of cases under the Bombay Prohibition Act would not result in conclusion that the activities of the petitioner were disturbing the public order or were affecting adversely to the public health. This is so because what is revealed through the investigation papers in all four cases denotes nothing but breach of provisions of law and not the activities involving the society at large or to disturb the even tempo of the society or a section thereof. For breach of law committed by the petitioner, he may be tried and may be punished, if he is found guilty. But surely the act constituting the offence in dealing or for possession of prohibited liquor, cannot be said to have affected the even tempo of life of the community. Those cases may be instances of breach of law and order, but by no stretch of reasoning, it could be

said that the activities reveal through the investigation papers, the public tranquility as defined under the PASA Act, was disturbed or public health was adversely affected.

9. The rest of the material which is in shape in four incamera statements is concerned, it must be borne in mind that while reaching to the subjective satisfaction about the alleged activities of the petitioner, it would be necessary for the detaining authority to consider fall out, reach, and impact of the activities of the petitioner and, thereafter to come to the conclusion that whether such activities were capable of disturbing the public order. All the four incidents as narrated through incamera statements reveal individual disputes more then to involve the society at large or disturbing the even tempo of the life of the community. The potentiality of the act alleged through incamera statements even from the bare reading of them is not capable to be branded to be the activities disturbing the even tempo of the life of the community or society at large or section thereof. No widespread danger or harm to the society could be inferred from the statements of the witnesses. Therefore, even after taking those statements on there face value, those four incidents, may be instances of disturbing the law and order, which would be taken care of by general law, but such activities cannot be said to be disturbing the public order or affecting adversely to the public health. In the matter of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Ors., reported in 2000 (1) G.L.H. 393, wherein after considering many decisions of the Apex Court, the Division Bench of this Court has observed in paragraphs No.20, 21 and 22 as under.

"20. The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and T. Devaki v. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly, in T. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was high lighted. It was also alleged that people were scared and had run helter skelter. In spite of such allegations the Supreme Court held that they were not cases of maintenance of public order and hence, an action

of preventive detention was uncalled for.

"21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again, in Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police and others, 1995 (2) GLR 1268 (SC), the Supreme Court considered the relevant decisions on point including the decision in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases.

10. The present set of facts are squarely covered by the above decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki [supra]. The subjective satisfaction, therefore, arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner, cannot be said to be legal, valid and in accordance with law. The order under challenge is required to be quashed and set aside on this ground alone.

11. In the result, the petition is allowed. The order passed by the District Magistrate, Bhavnagr District, Bhavnagar on 7th August, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The detenu Rajai Yogesh @ Yogu Chelaram is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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